

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

CHOBANI, LLC,

Plaintiff,

v.

THE DANNON COMPANY, INC.,

Defendant.

THE DANNON COMPANY, INC.,

Counterclaim Plaintiff,

v.

CHOBANI, LLC,

Counterclaim Defendant.

**Civil Action No.: 3:16-cv-00030 (DNH/DEP)**

**ECF Case**

**Hon. David N. Hurd**

**NOTICE OF APPEAL**

Pursuant to Federal Rules (a)(1) and 4(a)(1) of Appellate Procedure and 28 U.S.C. § 1292(a)(1), notice is hereby given that Chobani, LLC, Plaintiff and Counterclaim Defendant in the above-named case, hereby appeals to the United States Court of Appeals for the Second Circuit from an Order of the District Court for the Northern District of New York granting a preliminary injunction, which was entered in this action on the 29<sup>th</sup> day of January, 2016 (Dkt. #47).

Because a timely-filed motion to alter or amend this order pursuant to Fed. R. Civ. P. 59(e) is pending before the District Court (Dkt. #52), Chobani files this notice pursuant to Fed. R. App. P. 4(a)(4)(B), which provides that, “if a party files a notice of appeal after the court announces or enters a judgment – but before it disposes of any motion listed in Rule 4(a)(4)(A)- the notice becomes effective to appeal a judgment or order, in whole or in part, when the order

disposing of the last such remaining motion is entered.” *See also Hodge v. Hodge*, 269 F. 3d 155, 157 n. 4 (2d Cir. 2001) (“We pause to remind the clerks of the district courts that the filing of a notice of appeal does not divest the district court of jurisdiction to decide any of the postjudgment motions listed in Fed. R. App. P. 4(a)(4)(A), if timely filed”). Chobani will amend this notice as and if appropriate following the Court’s disposition of the pending motion. *See id.* (“[I]f the district court’s disposition of those motions results in alterations to the judgment, an amended notice of appeal must be filed if appeal from the amended judgment is desired”).

Dated: February 28, 2016

Counsel for CHOBANI, LLC,

s/ Julia Huston

---

Julia Huston (Bar Roll No. 518555)  
David A. Kluft (Bar Roll No. 303218)  
Anthony E. Rufo (Bar Roll No. 519130)  
Attorneys for Plaintiff  
Foley Hoag LLP  
155 Seaport Boulevard  
Boston, Massachusetts 02210-2600  
Telephone: 617 832 1000  
Facsimile: 617 832 7000  
E-mail: [jhuston@foleyhoag.com](mailto:jhuston@foleyhoag.com)  
[dkluft@foleyhoag.com](mailto:dkluft@foleyhoag.com)  
[arufo@foleyhoag.com](mailto:arufo@foleyhoag.com)

Douglas A. Foss (Bar Roll No. 601172)  
Svetlana K. Ivy (Bar Roll No. 516400)  
HARRIS BEACH PLLC  
99 Garnsey Road  
Pittsford, New York 14534  
Telephone: 585 419 8800  
Facsimile: 585 419 8811  
E-mail: [dfoss@harrisbeach.com](mailto:dfoss@harrisbeach.com)  
[sivy@harrisbeach.com](mailto:sivy@harrisbeach.com)

**CERTIFICATE OF SERVICE**

I hereby certify that on this 28th day of February, 2016, I electronically filed this Notice of Appeal with the Clerk of the District Court using the CM/ECF system, which sends notification of such filing to:

Douglas A. Foss at dfoss@harrisbeach.com;  
Svetlana K. Ivy at sivy@harrisbeach.com;  
Randall K. Miller at rkmiller@venable.com;  
Angel A. Garganta at aagarganta@venable.com;  
Marcella Ballard at mballard@venable.com;  
Chaim J. Jaffe at cjaffe@scolaro.com;  
David A. Kluft at dklurt@foleyhoag.com; and  
Anthony E. Rufo at arufo@foleyhoag.com.

/s/ Julia Huston

Julia Huston